

**Flaster/Greenberg P.C.**

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*Attorneys for plaintiff*

*J & J Snack Foods Sales Corp.*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

J & J SNACK FOODS SALES CORP.,

Plaintiff,

v.

DOGSTERS, LLC,

Defendant.

**Civil Action No.: 07-CV-03917 (AKH)**

**ANSWER TO COUNTERCLAIMS**

Plaintiff J & J Snack Foods Sales Corp. ("J & J"), by and through its attorneys  
Flaster/Greenberg P.C., hereby answers Dogsters LLC's ("Dogsters") Counterclaims dated June  
4, 2007 (the "counterclaim"), as follows:

**Nature of the Action**

1. Denied. The allegations, characterizations and conclusions contained in this paragraph refer to a written document, Dogsters' counterclaim, the terms of which speak for themselves. J & J therefore refers Dogsters to the referenced document for the contents thereof. All allegations, characterizations, and conclusions contained in this paragraph are denied, and Dogsters is left to its proofs.

2. Denied. J & J denies the allegations contained in paragraph 2 of Dogsters' counterclaim.

**Parties**

3. Upon information and belief, J & J admits the allegations contained in paragraph 3 of the counterclaim.

4. Denied. J & J Snack Foods Sales Corp. is a corporation organized under the laws of the State of New Jersey, with its principal place of business located at 6000 Central Highway, Pennsauken, New Jersey.

**Jurisdiction and Venue**

5. Denied. The allegations of paragraph 5 of the counterclaim constitute conclusions of law to which no further response is required. To the extent the allegations are deemed factual, they are denied.

6. Denied. The allegations of paragraph 6 of the counterclaim constitute conclusions of law to which no further response is required. To the extent the allegations are deemed factual, they are denied.

7. Denied. J & J denies the allegations contained in paragraph 7 of Dogsters' counterclaim.

**Facts**

**Dogsters Brand and Business**

8. Denied. J & J lacks sufficient knowledge or information to form a belief as to the truth of the averments in paragraph 8 and they are therefore deemed denied.

9. Denied. J & J lacks sufficient knowledge or information to form a belief as to the truth of the averments in paragraph 9 and they are therefore deemed denied.

10. Denied. J & J lacks sufficient knowledge or information to form a belief as to the

truth of the averments in paragraph 10 and they are therefore deemed denied.

11. Denied. J & J lacks sufficient knowledge or information to form a belief as to the truth of the averments in paragraph 11 and they are therefore deemed denied.

12. Denied. J & J lacks sufficient knowledge or information to form a belief as to the truth of the averments in paragraph 12 and they are therefore deemed denied.

13. Admitted in part; denied in part. J & J admits that Dogsters and IB entered into a License Agreement in April 20, 2004. The License Agreement, however, is a written document the terms of which speak for themselves. J & J therefore refers Dogsters to the referenced document for the contents thereof, and denies any and all allegations, characterizations, and conclusions regarding the License Agreement contained in this paragraph.

14. Denied. J & J lacks sufficient knowledge or information to form a belief as to the truth of the averments in paragraph 14 and they are therefore deemed denied.

15. Denied. J & J lacks sufficient knowledge or information to form a belief as to the truth of the averments in paragraph 15 and they are therefore deemed denied.

16. Denied. The allegations, characterizations and conclusions contained in this paragraph refer to a written document, Dogsters' counterclaim, the terms of which speak for themselves. J & J therefore refers Dogsters to the referenced document for the contents thereof. All allegations, characterizations, and conclusions contained in this paragraph are denied, and Dogsters is left to its proofs.

17. Denied. J & J lacks sufficient knowledge or information to form a belief as to the truth of the averments in paragraph 17 and they are therefore deemed denied.

18. Denied. The allegations, characterizations and conclusions contained in this paragraph refer to a written document, Dogsters' counterclaim, the terms of which speak for

themselves. J & J therefore refers Dogsters to the referenced document for the contents thereof. All allegations, characterizations, and conclusions contained in this paragraph are denied, and Dogsters is left to its proofs.

19. Denied. The allegations, characterizations and conclusions contained in this paragraph refer to a written document, Dogsters' counterclaim, the terms of which speak for themselves. J & J therefore refers Dogsters to the referenced document for the contents thereof. All allegations, characterizations, and conclusions contained in this paragraph are denied, and Dogsters is left to its proofs.

#### **The License Agreement**

20. Denied. J & J lacks sufficient knowledge or information to form a belief as to the truth of the averments in paragraph 20 and they are therefore deemed denied.

21. Denied. J & J lacks sufficient knowledge or information to form a belief as to the truth of the averments in paragraph 21 and they are therefore deemed denied.

22. Denied. J & J lacks sufficient knowledge or information to form a belief as to the truth of the averments in paragraph 22 and they are therefore deemed denied.

23. Denied. J & J lacks sufficient knowledge or information to form a belief as to the truth of the averments in paragraph 23 and they are therefore deemed denied.

24. Denied. J & J denies the allegations contained in paragraph 24 of Dogsters' counterclaim.

25. Denied. J & J lacks sufficient knowledge or information to form a belief as to the truth of the averments in paragraph 25 and they are therefore deemed denied.

26. Denied. J & J lacks sufficient knowledge or information to form a belief as to the truth of the averments in paragraph 26 and they are therefore deemed denied.

27. Denied. J & J lacks sufficient knowledge or information to form a belief as to the truth of the averments in paragraph 27 and they are therefore deemed denied.

28. Denied. J & J lacks sufficient knowledge or information to form a belief as to the truth of the averments in paragraph 28 and they are therefore deemed denied.

**The Proper Transfer of the License**

29. Denied. J & J lacks sufficient knowledge or information to form a belief as to the truth of the averments in paragraph 29 and they are therefore deemed denied.

30. Denied. The allegations, characterizations and conclusions contained in this paragraph refer to a written document, Dogsters' counterclaim, the terms of which speak for themselves. J & J therefore refers Dogsters to the referenced document for the contents thereof. All allegations, characterizations, and conclusions contained in this paragraph are denied, and Dogsters is left to its proofs.

31. Denied. The allegations, characterizations and conclusions contained in this paragraph refer to a written document, Dogsters' counterclaim, the terms of which speak for themselves. J & J therefore refers Dogsters to the referenced document for the contents thereof. All allegations, characterizations, and conclusions contained in this paragraph are denied, and Dogsters is left to its proofs.

32. Denied. The allegations, characterizations and conclusions contained in this paragraph refer to a written document, Dogsters' counterclaim, the terms of which speak for themselves. J & J therefore refers Dogsters to the referenced document for the contents thereof. All allegations, characterizations, and conclusions contained in this paragraph are denied, and Dogsters is left to its proofs.

33. Denied. J & J denies the allegations contained in paragraph 33 of Dogsters'

counterclaim.

34. Denied. The allegations of paragraph 34 of the counterclaim constitute conclusions of law to which no further response is required. To the extent the allegations are deemed factual, they are denied.

35. Denied. J & J denies the allegations contained in paragraph 35 of Dogsters' counterclaim.

36. Denied. The allegations of paragraph 36 of the counterclaim constitute conclusions of law to which no further response is required. To the extent the allegations are deemed factual, they are denied.

**Count 1: Trademark Infringement**

37. J & J re-alleges and re-incorporates by reference its responses to Paragraphs 1-36 of the counterclaim.

38. Denied. The allegations of paragraph 38 of the counterclaim constitute conclusions of law to which no further response is required. To the extent the allegations are deemed factual, they are denied.

39. Denied. The allegations of paragraph 39 of the counterclaim constitute conclusions of law to which no further response is required. To the extent the allegations are deemed factual, they are denied.

40. Denied. The allegations of paragraph 40 of the counterclaim constitute conclusions of law to which no further response is required. To the extent the allegations are deemed factual, they are denied.

41. Denied. The allegations of paragraph 41 of the counterclaim constitute conclusions of law to which no further response is required. To the extent the allegations are

deemed factual, they are denied.

42. Denied. The allegations of paragraph 42 of the counterclaim constitute conclusions of law to which no further response is required. To the extent the allegations are deemed factual, they are denied.

**Count II: False Designation of Origin**

43. J & J re-alleges and re-incorporates by reference its responses to Paragraphs 1-42 of the counterclaim.

44. Denied. The allegations of paragraph 44 of the counterclaim constitute conclusions of law to which no further response is required. To the extent the allegations are deemed factual, they are denied.

45. Denied. The allegations of paragraph 45 of the counterclaim constitute conclusions of law to which no further response is required. To the extent the allegations are deemed factual, they are denied.

46. Denied. The allegations of paragraph 46 of the counterclaim constitute conclusions of law to which no further response is required. To the extent the allegations are deemed factual, they are denied.

**Count III: Common Law Trademark Infringement and Unfair Competition**

47. J & J re-alleges and re-incorporates by reference its responses to Paragraphs 1-46 of the counterclaim.

48. Denied. The allegations of paragraph 48 of the counterclaim constitute conclusions of law to which no further response is required. To the extent the allegations are deemed factual, they are denied.

49. Denied. The allegations of paragraph 49 of the counterclaim constitute

conclusions of law to which no further response is required. To the extent the allegations are deemed factual, they are denied.

50. Denied. The allegations of paragraph 50 of the counterclaim constitute conclusions of law to which no further response is required. To the extent the allegations are deemed factual, they are denied.

**Count IV: Misappropriation of Dogsters' Trade Secrets**

51. J & J re-alleges and re-incorporates by reference its responses to Paragraphs 1-50 of the counterclaim.

52. Denied. The allegations of paragraph 52 of the counterclaim constitute conclusions of law to which no further response is required. To the extent the allegations are deemed factual, they are denied.

53. Denied. The allegations of paragraph 53 of the counterclaim constitute conclusions of law to which no further response is required. To the extent the allegations are deemed factual, they are denied.

54. Denied. The allegations of paragraph 54 of the counterclaim constitute conclusions of law to which no further response is required. To the extent the allegations are deemed factual, they are denied.

55. Denied. The allegations of paragraph 55 of the counterclaim constitute conclusions of law to which no further response is required. To the extent the allegations are deemed factual, they are denied.

**WHEREFORE**, plaintiff J & J Snack Foods Sales Corp. respectfully requests that the Court dismiss defendant's counterclaim with prejudice.



**AFFIRMATIVE DEFENSES**

**First Affirmative Defense**

Dogsters' counterclaim fails to state any claim upon which relief can be granted.

**Second Affirmative Defense**

Dogsters' claims are barred, in whole or in part, by the doctrine of estoppel.

**Third Affirmative Defense**

Dogsters' claims are barred because Dogsters is not acting in good faith.

**Fourth Affirmative Defense**

Dogsters has failed to mitigate its damages.

**Fifth Affirmative Defense**

Dogsters' claims are barred, in whole or in part, by the doctrine of waiver.

**Sixth Affirmative Defense**

Dogsters' claims are barred, in whole or in part, by the doctrine of unclean hands.

**Seventh Affirmative Defense**

Dogsters' claims are barred, in whole or in part, because Dogsters lacks standing.

**Eighth Affirmative Defense**

J & J does not waive and hereby expressly reserves the right to assert any and all defenses at such time and to such extent as discovery and factual developments establish a basis thereof.

**WHEREFORE**, plaintiff J & J Snack Foods Sales Corp. respectfully requests that the Court dismiss defendant's counterclaim with prejudice.

**FLASTER/GREENBERG P.C.**

Dated: June 22, 2007

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